No. 17315

United States
COURT OF APPEALS
for the Ninth Circuit

SAFEWAY STORES, INCORPORATED,
Appellant,

v.

MARVIN FANNAN,
Appellee,

and

MARVIN FANNAN,
Appellant,

v.

SAFEWAY STORES, INCORPORATED,
Appellee.

OPENING BRIEF OF APPELLANT SAFEWAY STORES, INCORPORATED, ON ITS APPEAL AND ITS ANSWER TO BRIEF OF APPELLANT MARVIN FANNAN

Appeals from the United States District Court for the District of Oregon.

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PRELIMINARY COMMENT

Both parties have appealed from the trial court's judgment of dismissal without prejudice under Rule 41, the appellant Marvin Fannan claiming that the order should not have been entered at all, and the appellant

Safeway Stores, Incorporated, claiming that it should have been a dismissal with prejudice because only that type of dismissal would have the same effect as a judgment based on a directed verdict for which the appellant Safeway Stores had moved at the trial of the cause and to which it claims it was entitled. The appellant Marvin Fannan has previously lodged his opening brief and in this brief of appellant Safeway Stores, Incorporated we will first discuss the error, if any, resulting from the trial court's failure to grant defendant's motion for a directed verdict as made by the defendant and thereafter will answer the brief of appellant Marvin Fannan.

SUPPLEMENTAL STATEMENT OF THE CASE

The basis of jurisdiction and statement of the case as set forth on pages 1-3 of the Fannan brief are correct. The following additional facts are set forth.

At the conclusion of the plaintiff's evidence the defendant moved the court for an order directing the jury to return a verdict in its favor. Specific grounds for the motion were set forth (R. 54).[1] After argument the court stated, "I grant the motion for dismissal." (Tr. 61-62). The court gave no indication that the dismissal was to be without prejudice.

Two days later the defendant presented a formal

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[1] Attention of the Court is invited to the fact that the remarks beginning in the final paragraph at the bottom of page 57 of the Transcript of Record are those of Mr. Wilson, attorney for the plaintiff, and not those of Mr. Tooze, defendant's attorney, as the record erroneously indicates.

order dismissing the case. The trial court, at the end of the order, added (in pen and ink) the words "without prejudice".

The defendant later moved the court to amend the judgment by striking the words "without prejudice". This motion was denied (R. 10-12).

SPECIFICATION OF ERROR

The court erred in dismissing the action without prejudice under Rule 41, Federal Rules of Civil Procedure, in view of the fact that the only motion by the defendant at the conclusion of plaintiff's case was for a directed verdict under Rule 50, Federal Rules of Civil Procedure. The appropriate action should have been for a directed verdict and a judgment based thereon, or at all events a dismissal with prejudice which would have the same effect—as an adjudication on the merits. The court repeated this error by denying defendant's motion to amend the judgment by eliminating therefrom the words "without prejudice".

SUMMARY OF ARGUMENT

A motion for a directed verdict under Rule 50(a) cannot be converted by the court into a motion for dismissal without prejudice under Rule 41(b). No such discretion is vested in the trial court.

ARGUMENT OF APPELLANT SAFEWAY STORES, INCORPORATED, ON ITS APPEAL

The issue on defendant's appeal is clear. Does a trial court, after the defendant has properly moved for a directed verdict under Rule 50 on the ground that the plaintiff's evidence is insufficient as a matter of law have the authority to grant a dismissal without prejudice under Rule 41?

After a plaintiff has rested, and his evidence is legally insufficient to go to the jury, a defendant has two alternatives. He may move for a directed verdict under Rule 50(a) or he may move for an order of involuntary dismissal under Rule 41(b). In a jury case, the "more appropriate procedure" is a motion for directed verdict, *Kingston* v. *McGrath,* 232 F.2d 495 (9 C.A., 1956).

Circuit Judge Stephens, in *U. S.* v. *U. S. Gypsum Co.,* 67 F. Supp. 397, reversed on other grounds, 68 S. Ct. 525, 333 U.S. 364, 93 L. Ed. 746; rehearing denied, 68 S. Ct. 788, 333 U.S. 869, 92 L Ed 1147, compared Rule 41(b) and Rule 50(a) as follows:

> " . . . Motions under Rules 41(b) and 50(a) are similar in that a motion under either rule leaves the defendant with a right to present his own case if the decision on his motion goes against him; and the motions under the two rules are similar in that both provide a defendant with a method of mid-trial attack upon the plaintiff's case, and a means of determining whether or not the defendant must present his evidence. But beyond these likenesses, motions under Rule 41(b) and Rule 50(a) should be assimilated only so far as is consonant

> with reason and with the spirit of the Federal Rules of Civil Procedure. . ."

Defendant submits that, having moved for a directed verdict, the trial court had no alternative but to either allow or deny defendant's motion.

Defendant has been unable to find a single federal case exactly in point. However, some federal decisions have obliquely touched upon the question.

In *Johnson* v. *N. Y., N. H. and H. R. Co.,* 344 U.S. 48, 73 S. Ct. 125, 97 L. Ed. 77 (1952) the plaintiff brought an action for wrongful death of her husband under the Jones Act. After the evidence was in the defendant moved to dismiss the complaint and also asked for a directed verdict. The trial court reserved decision on the motion (as authorized by Rule 50) and after a jury verdict and judgment against the defendant, the defendant moved to set aside the verdict. This was denied.

On appeal to the Supreme Court of the United States the defendant claimed that the final order should be an order of judgment for the defendant notwithstanding the verdict, rather than for a new trial. The court held, speaking through Justice Black:

> "Respondent's motion should be treated as nothing but what it actually was, one to set aside the verdict—not one to enter judgment notwithstanding the verdict."

Another case supporting the defendant's position herein is *Wight* v. *United Pacific Insurance Co., et al,* 154 F. Supp. 548 (D.C., Utah). This decision of course is

not binding upon this court, coming as it does from a lower court, but the reasoning of the trial court is convincing. In that case the plaintiffs moved to dismiss the suit without prejudice under Rule 41(a). One of the defendants consented to such a dismissal but the other defendant (United Pacific) moved for a dismissal upon terms. The plaintiffs contended that the dismissal should be without prejudice. The trial court held:

> ". . . The other parties cannot convert a motion made under another subdivision of Rule 41 into an agreement to dismiss under subdivision (a) (1) (ii) by consenting to a dismissal under the latter subdivision unless all parties consent to that particular type of dismissal. United Pacific has not done so, but relies upon the grounds stated in its original motion. . . "

The court then dismissed the case on terms.

In *International Shoe Co.* v. *Cool,* 154 F.2d 778 (8 C.A., 1946) the defendant moved for a directed verdict at the conclusion of the plaintiff's case in a trial had before a jury. The motion was argued and the court indicated its intention to sustain the motion. Thereupon the plaintiff moved for a voluntary dismissal. This was granted, the effect of which was a dismissal without prejudice. [The effect of the trial court's ruling in the case at bar was identical. Thus, the cases are in substance identical].

On appeal it was held that the trial court erred in thus dismissing the plaintiff's case and the judgment was reversed with directions to enter judgment dismissing the plaintiff's action, the court saying:

"At most, the discretion vested in the court is

> a judicial and not an arbitrary one and does not warrant a disregard of well settled principles of procedure . . . There is nothing to indicate that any further evidence might be produced, nor were there any procedural grounds for such dismissal."

See also *Conway* v. *O'Brien,* 111 F.2d 611 (2 C.A., 1940); *Massachusetts Protective Association* v. *Mouber,* 110 F.2d 203 (8 C.A., 1940).

Since, as the trial court concluded, the plaintiff's evidence was, as a matter of law, insufficient, then it is submitted that by the mandate of this court the lower court should be directed to vacate the judgment dismissing the action without prejudice and to enter an unconditional order dismissing the action with prejudice. Such action would be tantamount to a directed verdict and a judgment based thereon, to which the defendant was entitled.

SUMMARY OF ARGUMENT IN ANSWER TO BRIEF OF APPELLANT MARVIN FANNAN

The plaintiff's theory is that because the plaintiff was the first patron in the defendant's store, either the pencil was on the floor long enough for the defendant in the exercise of due care to discover and remove it, or the pencil was placed or dropped thereon by a Safeway employee. There is certainly no affirmative evidence supporting either alternative. Yet plaintiff claims that it would be proper for the matter to be sumitted to a jury; that a jury could find negligence under his "either-or" theory.

Plaintiff's theory overlooks these points:

(1) If plaintiff relies on the second alternative he must prove that the pencil was either *placed* on the floor or *negligently dropped* by a Safeway employee *in the scope of his employment*. There is no evidence whatever relative to any of these requirements.

(2) The pencil might have been accidentally dropped, in which case there would be no liability unless it were there long enough for the defendant in the exercise of due care to have discovered and removed it and the jury found that its presence created an unreasonable risk.

(3) The plaintiff's "either-or" theory is valid only so long as it appears that his two proposed alternatives are the *only* possible alternatives. Other alternatives, consistent with the evidence are present in this case, and thus, to submit the case to the jury would allow them to speculate on whether or not defendant was negligent.

ARGUMENT IN ANSWER TO BRIEF OF APPELLANT MARVIN FANNAN

A. Plaintiff's case summarized.

The evidence in this case is that the plaintiff and his sister were the first patrons to enter the defendant's store (R. 21, 28). The plaintiff claims he fell on a black, shiny marking pencil with a screw top as he was nearing the rear of the store (R. 18, 20, 27, 30). The manager told the meat man: "Go pick that

up. One man's already been hurt." (R. 29-30). The pencil, after being picked up, was placed in the pocket of the manager (R. 20, 29, 30). No inference can be drawn from these facts that the manager was claiming that the pencil was his or Safeway's. In fact, the words: "One man's already been hurt" created the inference only that the manager wanted to remove an obstacle that had already caused an injury. The same comment and the same conduct on the part of the manager would have been appropriate if the object had been a pebble on the floor.

From these facts the plaintiff claims that ". . . [Either] the pencil had been there all night, a sufficient length of time for the defendant to have discovered it, or, if it had not been there all night, it had been dropped there by a Safeway employee." (Plaintiff's Brief, page 4).

B. Oregon law stated.

The Oregon rule relative to cases such as this is stated in the case of *Cowden* v. *Earley,* 214 Or. 384 at 387, 327 P.2d 1109 at 1111:

> "The rule of law applying to a case of this kind is well established. An invitee who is injured by slipping on a foreign substance on the floor or stairs of business property must, in order to recover from the occupant having control of said property, show either:
>
> "(a) That the substance was *placed* there by the occupant, or
>
> "(b) That the occupant knew that the substance was there and failed to use reasonable diligence to remove it, or

"(c) That the foreign substance had been there for such a length of time that the occupant should, by the exercise of reasonable diligence, have discovered and removed it." (Italics supplied)

C. Plaintiff's theory analyzed.

There is not a shred of evidence in this case as to how or when this pencil came to be on the floor, or from what source it came. Notwithstanding this fact, the plaintiff argues that the pencil either had to be there overnight, in which case the defendant knew or should have known of its existence, or that the defendant, or its agents, dropped it.

Regarding the first of these alternatives, there is no evidence whatever that the pencil had been in the store overnight and, in fact, no evidence as to whether it had been on the floor one minute, five minutes or longer. Regarding the second alternative, there is no evidence that any of the defendant's employees placed it there, that it was a pencil owned by Safeway or any of its employees, or that it was placed or dropped by any Safeway employee in the course of his employment. Thus it is seen that there is no evidence in itself sufficient to fulfill any *one* of the requirements of *Cowden* v. *Earley,* supra. Yet plaintiff reasons that from the fact that the pencil was on the floor and from the fact that the plaintiff was the first customer in the store, the pencil either had been there long enough to be discovered, or it *had* to be a Safeway pencil or one dropped by an employee of Safeway.

The pencil which he claims caused his fall was

described by the plaintiff on direct examination as a black shiny pencil; that it was just "a round, pretty heavy pencil with a little screw apparatus on top, the one I seen". (R. 20). On cross-examination he described it as a grease pencil with a screw top used for marking merchandise with which he was familiar having used a similar pencil in his father's store (R. 22). His sister, Mrs. Perrigo, described it as black and shiny, "five or six inches long, I guess, or something like that. Black-like, kind of slick looking like plastic." (R. 30). Plaintiff on page 6 of his brief describes the pencil as "a black shiny pencil, described as round and pretty heavy, with a little screw apparatus on top [R. 20, 30]."

On page 10 of the plaintiff's brief, however, plaintiff makes the statement that "Mr. Steinsiek testified that his own pencil, Exhibit 6E, which was similar to the type of pencil described by plaintiff and his sister, was not a common type of pencil, and was the same type used for making banners that Safeway uses in its stores, which were made by an employee right in the Tillamook store (R. 46-47)." Plaintiff using this statement as a premise then argues that: "This evidence would be sufficient to take to the jury the issue of whether or not the pencil was a Safeway pencil, and hence presumably dropped by a Safeway employee."

In the first place the comment that Exhibit 6E is similar to the type of pencil described by the plaintiff and his sister is wholly unfounded. An inspection of Exhibit 6E will show that it is a pencil with a wooden, not a plastic, casing and in the second place it does not

have a screw top. In the third place the statement of the plaintiff to the effect that Steinsiek testified that Exhibit 6E was the same type used by Safeway in making banners that Safeway uses in its stores is not correct. He did not testify that Safeway used such a pencil in making banners. In fact he testified otherwise:

> "Q. And is that type of pencil what you would use in making Safeway banners?
>
> A. Not everyone uses that type of pencil, but I use it for that purpose." (R. 47).

And lastly, Steinsiek said that the pencil, Exhibit 6E, was an art pencil used not only for paper banners but also for show cards, or other rough surfaces, like a rough piece of plyboard, or a concrete wall (R. 46-47). He did not identify it as a grease pencil used for marking merchandise.

Plaintiff further argues that, notwithstanding the fact that there is no evidence supporting either of his two alternatives (i.e. that the pencil had been on the floor long enough to charge the defendant with constructive notice of it or that an employee of defendant had dropped it) nevertheless no other alternative exists and the jury should be permitted to find an inference of negligence, whichever alternative it found to exist. Let us test the plaintiff's position against the principles of logic and law.

There is no question but that if there was evidence that the pencil had been on the floor since the previous night a jury's finding that the defendant was negligent would be unassailable. That is one extreme under which the defendant might be found to be liable (Point C. of

Cowden v. *Early*). At the other end of the spectrum we find a situation illustrated by the case of *Miller* v. *Safeway Stores, Incorporated,* 219 Or. 139, 312 P.2d 577, 346 P.2d 647 (1959). In that case the plaintiff, a customer in the defendant's store, tripped on a carton which protruded into the aisle. There was a verdict and judgment for the defendant. On appeal the judgment was affirmed. The Oregon court specifically noted that this was the type of case that comes within point (a) of *Cowden* v. *Early,* supra, because the defendant admitted that the boxes were *placed* there by its employees. Thus, there was no question about the defendant's knowledge. The case at bar obviously does not come within the holding of the *Miller* case, because the source from which the pencil came, and the identity of the person who dropped the pencil remain unascertained. No inference can be drawn that anyone *placed* the pencil on the floor.

Also there is a type of case in which an employee negligently permits foreign matter to be left upon the surface. Illustrative of that type of case is *Eitel* v. *Times, Inc.,* 221 Or. 585, 352 P.2d 485 (1960). In that case recovery for the plaintiff was sustained when the evidence showed that the defendant knew that its newsboys were leaving wires from bundles of newspapers on the sidewalk. The court held that there was sufficient evidence to charge the defendant with negligence in knowingly creating a hazardous situation.

In both cases, *Miller* v. *Safeway,* and *Eitel* v. *Times,* supra, there was evidence that the defendant either

knew, or in the exercise of reasonable care should have known, that the objects were upon the floor or sidewalk. No such evidence appears either directly or inferentially in the case at bar.

We submit that the evidence in this case, viewed in the light most favorable to the plaintiff, is wholly insufficient to bring this action within either type of case, that is, where the article was on the floor for such a length of time that the defendant in the exercise of due care, should have known of and removed it, or where the article was either placed there by the defendant or the defendant *negligently* caused it to be there.

For the plaintiff to recover under his "either-or" theory, he must *prove* that the object had been there for such a length of time that defendant knew or in the exercise of reasonable care should have known of it, or that the defendant placed the object on the floor or negligently dropped it thereon. Any hypothesis consistent with the evidence which does not come within plaintiff's "either-or" theory dooms his case.

D. There is a complete lack of evidence that the pencil was on the floor because of the negligence of an employee of the defendant.

A case which illustrates this point exactly is *Quinn* v. *Utah Gas & Coke Co.*, 42 Utah 113, 129 P. 362 (1912). That was an action for damages to the clothing of the plaintiff, a customer in the defendant's office. The evidence was that the plaintiff went to pay her gas bill at the defendant's office where the customers handed their payments through an opening in a wire screen

on the other side of which was the defendant's cashier. The plaintiff waited in line, paid her bill, and then found ink upon her clothing from a spilled ink bottle. There was no evidence as to how or when the ink was spilled or by whom. There was a verdict and judgment for the plaintiff. The defendant appealed.

On appeal the judgment was reversed, the court holding (129 P. at 364):

> "In the case at bar there is not the slightest evidence with respect to who overturned the ink bottle, or how or where it was overturned. . .
>
> * * *
>
> "At most, therefore, the case falls within the familiar doctrine that 'when a plaintiff produces evidence that is consistent with an hypothesis that the defendant is not negligent, and also with one that he is, his proof tends to show neither' [citing cases]. Is it not just as reasonable to infer that the ink was accidentally spilled as to infer that it was negligently done? . . . The inference that the spilling of the ink was accidental is, in our judgment, much stronger than the inference that it was otherwise. Under such circumstances a finding of negligence can only be based upon conjecture."

To the same effect is *Carpenter* v. *Herpolsheimer's Co.*, 278 Mich. 697, 271 N.W. 575. In that case the plaintiff was a customer in the defendant's store and was injured when she stepped in a box in the middle of the aisle. The box looked like a box that possibly had had large purses in it. The evidence showed that in the center of the aisle, a few feet away, empty boxes were piled under the table by clerks.

In denying recovery, the court said (271 N.W. at 575):

> ". . . The difficulty with plaintiff's case is that there was no evidence that the box which she claims was in the aisle and tripped her was a purse box; nor, if it was, that it had been piled negligently under the table; nor how it got in the aisle; nor that defendant had knowledge of its being there; nor that it was in the aisle long enough so that defendant should have known of it."

To the same effect is *Whentz* v. *J. J. Newberry Co.,* 245 App. Div. 790, 280 N.Y. Supp. 824 and *Hill* v. *Castner-Knott Dry Goods Co.,* 25 Tenn. App. 230, 166 S.W.2d 638.

Searching for cases on all fours with the case at bar has revealed no case precisely in point. The only case found by defendant involving a pencil is that cited by plaintiff in his brief, *The Vogue, Inc.* v. *Cox,* 28 Tenn App. 344, 119 S.W.2d 307. In that case the plaintiff fell on a pencil lying on the floor of the defendant's store near a wrapping counter. Immediately after the plaintiff fell, the saleslady who had been waiting on her came up and said, "That is my pencil," and stuck it in her hair.

On these facts, the Tennessee court held that the plaintiff had made out a prima facie case; that the fact the saleslady claimed the pencil as hers unaided by any other circumstances, raised an inference that she had dropped it and knew it was there. (No such evidence has been produced in the instant case).

The language in the case which is pertinent in this case is (119 S.W.2d at 310):

> "The gist of this charge is that the pencil was negligently allowed to remain on the floor and

> we do not see that defendant has been injured by the suggestion carried by the declaration that it got there in a manner different from that shown by the proof. *It was not negligence to drop a pencil on the floor, but it was negligence to allow it to remain there.*" (emphasis added)

From the sentence emphasized above, it is seen that the court based its decision in that case upon the evidence that the employee *knew* that she had dropped the pencil, the negligence being the failure to pick it up rather than any fault in dropping it in the first instance.

Plaintiff must also prove, if he is to rely on a theory that the pencil was dropped or placed on the floor by an employee, that the pencil was placed or negligently dropped on the floor by an employee *in the scope of his employment*. There is a complete lack of evidence that the pencil involved here was either placed on the floor by an employee of defendant or negligently dropped onto the floor. Moreover, there is no showing that even were the pencil so placed or dropped, that the employee had done so in the scope of his employment.

As stated in the case of *Quinn* v. *Utah Gas & Coke Co.*, 42 Utah 113, 129 P. 362, which has been previously discussed by us, it is entirely possible that the pencil was accidentally dropped. ["Is it not just as reasonable to infer that the ink was accidentally spilled as to infer that it was negligently done?" . . . 129 P. 362 at 364].

Before the rule of *respondeat superior* may be applied, ". . . it must be shown that the relationship of

principal and agent or master and servant existed at the time the damage was done, and that the servant was acting in the course of his employment . . ." *Hantke* v. *Harris Ice Machine Works,* 152 Or. 564, 54 P.2d 293. Accord: *Jacobson* v. *Kirn,* 192 Va. 352, 64 S.E.2d 755; *Kohlman* v. *Hyland,* 54 N.D. 710, 210 N.W. 643, 50 A.L.R. 1437; *White Oak Coal Co.* v. *Rivoux,* 88 Ohio St. 18, 102 N.E. 302, 46 L.R.A. (N.S.) 1091, Ann. Cas. 1914 C. 1082; *Obertoni* v. *Boston & M. R. R.,* 186 Mass. 481, 71 N.E. 980.

In the *Obertoni* case, just cited, the plaintiff, a boy 8 years old, was injured when, after he found a signal torpedo at a grade crossing, he took it home, cracked it with a rock and was hurt. The evidence showed that two of the defendant's employees had been playing catch with the torpedo and left it at the crossing. The court, in denying recovery to the plaintiff, held, first, that there was no evidence that the employees were acting in the scope of their employment, and second, that there was no evidence the torpedo was there through the negligence of the defendant.

> "The fact that it was a railroad's signal torpedo warranted the inference that it was left on the crossing by someone who took it from the defendant railroad, but did not warrant the further inference that it came there through some negligence of the defendant, or its employes . . . It is equally probable that it was taken from the railroad by a stranger or by an employe for some purpose of his own . . . The burden is on the plaintiff to prove that it came there by act of the defendant or its employes in the course of its business . . ." 71 N.E. at 981.

The fallacy of the plaintiff's case is seen from the

statement on pages 8 and 9 of his brief as follows:

> "If one of defendant's employees dropped the pencil, it is clear that the defendant can be held liable for their conduct, even without proof of the length of time which the pencil had been on the floor . . ."

This is simply not the law, for it overlooks the requirements that the employee must be acting in the scope of his employment and that there must be some evidence that the pencil was negligently or intentionally dropped. The pencil might well have been dropped by an employee on his way to work, it might have been dropped by a tradesman delivering merchandise, or it might have been *accidentally* dropped by an employee, even though he was working in the scope of his employment. Moreover, even had the plaintiff shown that the pencil had been dropped by one of the defendant's employees, that would not prove either that the employee was in the scope of his employment, or that the pencil had been negligently dropped.

This is not a case of res ipsa loquitur. In effect, plaintiff is attempting to bring it within that rule.

For additional support on this point see *Whentz* v. *J. J. Newberry Co.,* 245 App. Div. 790, 280 N.Y. Supp. 824; 34 Am. Jur., Master and Servant, § 552; *Prushensky* v. *Pucilowsky,* 269 Mass. 477, 169 N.E. 422.

There is no evidence tending to show that the defendant had either actual or constructive knowledge of the pencil being on the floor. *Rowbottom* v. *U. P. Coal Co.,* 39 Utah 408, 117 P. 871; *Jenson* v. *H. S. Kress & Co.,* 87 Utah 434, 49 P.2d 958.

Notice is a fact to be proved, like all other facts, by direct proof of the fact itself, or by proof of circumstances from which the fact may be reasonably inferred. *Jacobson* v. *Kirn,* 192 Va. 352, 64 S.E.2d 755. There simply is no evidence from which it can be inferred either that the defendant knew that the object was on the floor, or that in the exercise of reasonable care it should have known that the object was on the floor, or that the defendant intentionally placed or negligently dropped the object upon the floor.

CONCLUSION

The plaintiff's "either-or" theory fails because, first, there is no evidence supporting either alternative, and, secondly the evidence is consistent as well with the hypothesis that Safeway did not create the condition, had no notice, actual or constructive, thereof, and that neither Safeway nor any of its employees negligently caused the pencil to be in the aisleway.

Respectfully submitted,

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APPENDIX

EXHIBITS

	Identified (Page of Tr.)	Offered (Page of Tr.)	Received (Page of Tr.)
Plaintiff's Exhibits			
No. 1 (A-B—X-rays of Plaintiff	50	50	51
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No. 6 C—Black Plastic Pencil	44	50	51
No. 6 D—Wooden Pencil	44	50	51
No. 6 E—Short Wooden Pencil	44	50	51
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